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EX PARTE OR LATE FILED

October 11, 1994

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William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Attention: Dr. Robert M. Pepper, Chief
Office of Plans and Policy

Re: **EX PARTE PRESENTATION**
PP Docket No. 93-253

Dear Mr. Secretary:

Transmitted herewith on behalf of Media Communications Partners, Providence Ventures Inc., Fleet Equity Partners and Spectrum Equity, in accordance with Rule Section 1.1206(a)(1), is an original and two copies of an Ex Parte Presentation in PP Docket No. 93-253.

Should any questions arise concerning this filing, kindly contact this office.

Very truly yours,


John B. Branscome

Attachments

cc: Robert M. Pepper, Chief
Donald H. Gips, Deputy Chief
Commissioner Reed E. Hundt, Chairman
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 309(j))	
of the Communications Act -)	PP Docket No. 93-253
Competitive Bidding)	

To: Dr. Robert M. Pepper, Chief
Office of Plans and Policy

EX PARTE PRESENTATION

Respectfully submitted,

MEDIA COMMUNICATIONS PARTNERS

PROVIDENCE VENTURES INC.

FLEET EQUITY PARTNERS

SPECTRUM EQUITY

Date: October 11, 1994

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EXECUTIVE SUMMARY

Media Communications Partners, Fleet Equity Partners, Providence Ventures Inc., and Spectrum Equity (collectively, the "Petitioners") recommend that the Commission modify the definition of "Control Group" of Designated Entities to include investors which may not be characterized as a Designated Entity. Additionally, the Petitioner request that the Commission revisit its rules governing Installment Payments, the filing of the Short-Form Application for the Entrepreneurs' Block auctions, and the number of Entrepreneurs' Block licenses which one applicant may require.

Failure of the Commission to encourage investment by venture capital firms while not discouraging large corporations from creating "captive" Designated Entities may frustrate the objectives of both Congress and the Commission to provide an opportunity to create more representation of Designated Entities in the communications sector. Venture capital firms have a history of creating vibrant businesses run by competent persons that otherwise were unable to obtain the initial capital to start the companies. Modifying the broadband PCS rules to permit venture capital firms to structure their investments in Designated Entity applicants consistent with terms used for other entrepreneurial ventures will ensure that the Commission's goals are met and will be in the public interest.

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To: Dr. Robert M. Pepper, Chief
Office of Plans and Policy

EX PARTE PRESENTATION

Media Communications Partners, Fleet Equity Partners, Providence Ventures Inc. and Spectrum Equity (collectively, the "Petitioners") respectfully request that the Federal Communications Commission ("Commission" or "FCC") amend its rules pertaining to eligibility criteria for Designated Entities (as such term is defined in Section 1.2110 of the Commission's rules) for licenses in the broadband Personal Communications Service ("PCS"). Specifically, the Petitioners recommend that the Commission modify the definition of "Control Group" of Designated Entities to include investors which may not be characterized as a Designated Entity. Additionally, the Petitioners request that the Commission revisit its rules governing Installment Payments, the filing of the Short-Form Application for the Entrepreneurs' Block auctions, and the number of Entrepreneurs' Block licenses which one applicant may acquire.

I. Introduction of Petitioners

Each of the Petitioners is a venture capital firm which provides capital to entrepreneurial ventures in the communications industry, including wireless communications:

Media Communications Partners ("MC Partners") is a Boston based investment firm that provides equity financing and strategic guidance to entrepreneurial ventures in the media and communications industry. With an active investment portfolio exceeding \$400 million, MC Partners and its predecessor TA Communications have long been recognized as one of the largest private equity investors in the media and communications industry. Particular areas of focus for the firm include wireless communications, cable television, broadcasting, publishing and security monitoring. The firm has invested more than \$650 million in entrepreneurial media and communications companies since 1976. In addition to making direct equity investments, MC Partners has arranged over \$1 billion in senior and subordinated debt financing for its portfolio companies.

Specifically, in wireless communications, MC Partners has actively invested in the development of the wireless communications industry in the United States since 1982. MC Partners participated in the primary development of many urban markets throughout the 1980's. The firm has recently focused on the development of wireless communications in rural markets through its investments in Triad Cellular, Midsouth Cellular and Western Wireless (formerly General Cellular), which collectively own and operate cellular systems covering a resident population ("pops") of 5.7 million. The firm has also participated in the Specialized Mobile Radio ("SMR") segment of the wireless communications sector, having provided capital to Nextel Communications, Inc. and CellCall, Inc. MC Partners has recently made a seed investment through an existing portfolio company in a paging company that provides paging services in Brazil and is working to obtain additional licenses in Argentina and Chile. The firm

is actively pursuing domestic and international investment in opportunities in the wireless communications section, including broadband PCS.

Providence Ventures Inc. is a private equity firm that specializes in investments in wireless communications, cable television, broadcasting and publishing. The principals of Providence Ventures Inc., located in Providence, Rhode Island, are responsible for the media and communications investments of Narragansett Capital, Inc. and manage the assets of three prior equity funds. These funds represent over \$550 million in risk capital invested to date. The principals have completed over 40 media and communications investments which, in the aggregate, represent total financing in excess of \$1 billion.

The firm is now investing funds from the \$171 million Providence Media Partners L.P. equity fund. Wireless investments include being the founding equity investor in Pacific Northwest Cellular (later merged into Western Wireless), an entrepreneur-formed cellular telephony company, PowerFone, Inc., a venture backed SMR/ESMR company, and CellNet Data Systems, Inc., a start-up wireless data company that has developed a low cost, spectrum efficient solution for data transport.

Fleet Equity Partners ("FEP"), which has been in existence for over twenty (20) years, is a private equity firm located in Providence, Rhode Island with close of \$300 million under management. FEP has made many investments in the telecommunications industry principally through the following means. FEP has directly provided equity capital to companies in the following industries: cellular (Bachtel Cellular); SMR (OneComm, Inc.); paging (Dial Page, Inc.); satellite wireless services (Orion Network Systems); competitive access providers (Brooks Fiber); and, local exchange companies (MJD Communications). In addition, FEP has also

invested in many other private equity firms which also provide equity capital to the telecommunications industry.

II. Purpose of Presentation

The Petitioners are interested in providing funding to Designated Entities to participate in the broadband PCS auctions and develop new entrepreneur businesses in this sector of wireless communications. However, the existing Commission's rules are too restrictive and will obstruct venture capital firms from investing in the Designated Entity PCS ventures.

Section 309(j)(4)(D) of the Communications Act, as amended, directs the Commission to provide small businesses, rural telephone companies, and businesses owned by member of minority groups and women an opportunity to participate in the provision of spectrum-based services. Congress found that these Designated Entities were underrepresented in the communications. One reason for the underrepresentation is that these groups do not have access to capital. Therefore, Congress directed the Commission to provide certain measures to eliminate the barriers to entry into spectrum-based services, such as PCS, by the use of bidding credits, installments payments and tax certificates. Congress also required the Commission to prescribe area designations and bandwidth assignments to further promote economic opportunities for Designated Entities.

To that end, the Commission has adopted rules for broadband PCS which establish certain eligibility criteria to permit Designated Entities to qualify for bidding credits and installment payments and to bid for Entrepreneurs' Block licenses. The Commission also has recognized that rules pertaining to Designated Entities must vary depending on the nature of each individual spectrum-based service and retained its discretion to modify provisions governing

Designated Entities for capital-intensive services such as broadband PCS. The Petitioners urge the Commission to revisit its definition of the Control Groups for Designated Entities and modify the definition in a manner which will provide incentives to venture capital firms to provide the necessary capital to the Designated Entity applicants to enter the PCS industry.

III. General Principles

Congress has identified that certain sectors of the business community have not been able to enter the communications arena because of a lack of capital. The objective of both Congress and the Commission is to provide an opportunity for these underrepresented groups to (1) manage and develop communications business; (2) exert control over the license; and (3) derive a sufficient share of the economic benefit of the establishment of new spectrum-based services. Venture capital firms, such as Petitioners, are in the best position to assist Congress and the Commission in achieving these goals by increasing the number of new companies, boosting the country's economic health and creating new job opportunities, especially for members of minority groups and women. Moreover, petitioners will permit such groups to obtain substantial economic benefits, increase the net worth of such groups which may be utilized in other communications ventures or other business opportunities. However, the structure of the Commission's current rules do not provide the proper incentive for venture capital firms to invest in the Designated Entity applicants because the firms are not able to protect their investments with normal terms and conditions enjoyed with other entrepreneurial ventures.

Petitioners, and other venture capital firms, historically do not want to control day-to-day operations of ventures in which they invest. Their role is to identify competent persons which have the capabilities of managing a business and partner with such persons by providing the

financing for the venture. Historically, venture capital firms provide for an exit strategy five (5) to seven (7) years from the date of the initial investment. The exit of the venture capital firms oftentimes leaves intact an ongoing business which the principal management team may continue to develop.

Such investments normally carry the risk that the management team is unable to successfully develop the business which may result in the loss of the venture capital. To reduce the risk of loss, the venture capital firms obtain certain rights over the management of the business, such as the ability to replace management when the success of the business is at risk and to participate in major decisions which affect the financial health of the business.

Venture Capital ("VC") firms have the opportunity to invest in Designated Entity applicants under the existing broadband PCS rules; however, the typical VC deal structure would result in the Designated Entity applicant being unable to qualify for bidding credits, installment payments and eligibility to bid on Entrepreneurs' Block licenses. The loss of venture capital funds may undermine the Commission's objective to provide an opportunity for new businesses to develop. Designated Entities applicants may find that the only alternative means to attract equity financing is to agree to "captive" agreements with large corporations. Such investors will utilize the Designated Entity applicant as a means by which the large corporations will ultimately acquire the PCS license rather than developing a on-going entrepreneurial business.

The suggested modifications to the Commission's broadband PCS rules reflect the structure of a typical VC investment. The purpose is not to exert undue control over the day-to-day management decisions of the licensee, but to provide input into the strategic decisions primarily relating to financing. These modifications require the Designated Entity to be involved

in the day-to-day decisions involving the license and do not undermine the Commission's objective to provide managerial opportunities to the Designated Entity.

IV. Proposed Revisions to Designated Entity Eligibility Criteria

The Petitioners recommend that the Commission adopt a two-tier approach to encourage venture capital investment in Designated Entity applicants. Under this two-tier approach, venture capital firms may be part of the Control Group of the Designated Entity applicant without disqualifying the applicant from Designated Entity status.

In the text of the next order modifying its broadband PCS rules, the Commission should indicate that its primary intent in providing incentives to invest in Designated Entity applicants is to allow Designated Entities to gain managerial experience and reap the economic benefits of developing a successful entrepreneurial venture. The Commission should specifically state that this intent is not met by large established telecommunications companies using such designated Entity investments as strategic acquisition vehicles to fill out their broadband PCS strategies.

The rules should be modified to permit the following structure for Designated Entity applicants in broadband PCS:

1. Control Group Must Hold 50.1% of voting interest of the Company.
 - a. Designated Entity (as currently defined) must be part of the Control Group and must retain 50.1% of the voting interest of Control Group.
 - b. Investors not meeting the definition of a Designated Entity, but having the attributes of a venture capital firm may hold up to 49.9% of voting interest in Control Group. Assets and gross revenues of such investor or its affiliates will not be attributed to Designated Entity applicant.
2. Control Group must retain 25% of the total equity of the Designated Entity applicant with the Designated Entity being required to hold a

minimum of 10% of the total equity. The remaining 15% can be used to reward management and/or be made available to the venture investor.

3. Supermajority voting provisions should not be precluded by the rules. Specifically, such provisions should govern decisions, such as but not limited to :
 - a. Capital investments and disposition of assets of the Designated Entity licensee;
 - b. Approval of the annual operating budgets;
 - c. Hiring and compensation of management;
 - d. Entering into Equipment Vendor contracts; and
 - e. Debt and equity financing.
4. Rules should not preclude traditional means of rewarding management, such as equity-linked incentives.
5. For creation of additional capital, the Commission should not preclude issuance of preferred stock with a liquidation preference for its face amount plus accrued dividends which does not count against the Designated Entity equity.
6. The Commission should not preclude the investment firms from replacing the Designated Entity during the initial license term should such replacement be necessary under normal circumstances to protect the equity investment. Should the investment firm not replace the Designated Entity with another Designated Entity, then the prescribed penalties for loss of eligibility as a Designated Entity would flow from such decision.

V. Proposed Modification to Filing of Short Form Application to Bid in Entrepreneurs' Block Auction

In conjunction with the proposal above, the Petitioners urge the Commission to require Designated Entity applicants which wish to participate in the broadband PCS auction for Entrepreneurs' Blocks C and F to file the required FCC Form 175 short-form application identifying the Control Group of such applicants no later than 5:30 p.m. Eastern time

December 21, 1994. These short form applications are required to be filed with the Commission by potential participants in auctions to be conducted by the Commission prior to the auction. Failure to timely file such applications results in the person from being unable to participate in the auction. The timing of this filing is based on the Commission's scheduled broadband PCS auction for frequency blocks A and B, and is suggested to increase the opportunity of Designated Entities to form on-going new companies and derive the fullest economic benefit from the establishment of the business. The Commission should ensure that its establishment of incentives for investment in Designated Entity applicants do not result in such applicants paying out-of-market prices for the Entrepreneurs' Block licenses. There is risk that strategic investors may require the Designated Entity applicant to bid the prices of the licenses up to ensure the strategic investors' acquisition of certain markets as a substitute for failure to acquire a particular market in Blocks A and B. The more per pop price a Designated Entity applicant is required to expend in acquiring a PCS license will result in less economic benefit accruing to the Designated Entity from the successful development of the PCS service.

The Commission has scheduled the auction for the broadband PCS licenses to be authorized in the 51 Major Trading Areas ("MTA") for frequency blocks A and B to begin on December 5, 1994. The auction, should it extend into the holiday season will be suspended from the close of bidding on December 21, 1994 until January 3, 1995. Most likely, the larger corporations participating in these auctions will be able to identify which licenses they may be able to acquire and have formed other strategic investment plans. As discussed above, these strategic investment plans may include creating "captive" Designated Entities. As previously stated, the creation of "captive" Designated Entities is not consistent with the Commission's objectives

because the Designated Entities will not derive the full economic benefit of developing a successful venture.

To discourage the acquisition of Entrepreneurs' Block licenses by "captive" Designated Entity applicants, the Commission should require that the FCC Form 175 applications to participate in the Entrepreneurs' Block auction be filed no later than the close of MTA license bidding on December 21, 1994. The applicant would be required to disclose the participants in the Control Group as well any other passive investors in the applicant. This requirement will result in the Commission's objectives being achieved as they relate to providing opportunities to underrepresented group in spectrum-based services.

Alternatively, should the Commission not adopt the requirement to file a short-form application prior to December 21, 1994, the Petitioners suggest that the Commission modify its rules to prohibit a Designated Entity applicant from participating in the Entrepreneurs' Block auction should any investor in such applicant have won any MTA License. Again, the purpose of this restriction is to foreclose the creation of "captive" Designated Entities. However, this restriction should not interfere with an investment after the Entrepreneurs' Block auction by a broadband PCS MTA license winner in a Designated Entity licensee.

VI. Proposed Modifications to Installment Payment Provisions

Under existing Commission rules, winning Designated Entity applicants are required to pay a portion of the winning bid as a down payment, and may utilize installment payments to pay the remainder of the winning bid. The rules, however, require that such installment payments begin immediately upon award of the license. In order to build out the PCS system, the winning applicant will be required to obtain additional financing either through bank

financing or Equipment vendor financing. Typically, such financing requires the cash flow to be paid to the lender and the funds received under the financing may not be used to pay other debts, such as the winning bid. Therefore, the Designated Entity applicant will be required to draw from equity to pay the bid price which may limit the number of Designated Entities that may bid for the licenses or may increase the default rates on the licenses.

The Petitioners recommend that the Commission rules be modified to address this financing issue for Designated Entities. The rules should be amended to defer any payments on the remainder of the winning bid for a period of five years. At the end of five years, a payment equal to the interest payment accrued during this five year would be due and payable. With this structure, Designated Entities would have more alternatives for financing and have more opportunity to successfully develop the PCS system.

Further, the Commission rules must be modified to recognize that most traditional bank lenders and equipment vendors will require a first lien on the assets of the Designated Entity applicant/licensee. Thus, the Commission's rules should not preclude Designated Entity licensees from subordinating the installment payments to senior bank or equipment vendor financing.¹

VII. Proposal to Modify the Number of Licenses Any Designated Entity May Acquire

The Petitioners recommend that the Commission revisit its decision to allow one applicant to acquire a maximum of 98 licenses available in the frequency blocks C and F. This number of licenses encourages the creation of "captive" Designated Entities and will undermine the

1\ The Commission should restrict such subordination rights only when financing is obtained from recognized financial institutions and equipment vendors and should not include financing by strategic investors.

Commission's objective to have a diverse number of licensees to increase competition in the PCS band and provide an increased opportunity in communications to the greatest number of underrepresented groups in communications. The Petitioners submit that an applicant should be restricted to acquiring licenses for a specified number of "pops" to be served. The Petitioners suggest that a Designated Entity be limited to acquiring licenses which would serve more than 10% of the overall population.

VIII. Restrictions on Management Agreements

One means by which large corporations may create "captive" Designated Entities is by the use of Management Agreements which effectively eliminate control over the day-to-day management of the business by the Designated Entity. The manager typically retains ownership of the vital components of the equipment which may prevent the Designated Entity from severing the relationship with the manager without adversely impacting the value of the system,, i.e., the Designated Entity is forced to sell out to the manager. The Commission should impose strict regulations over such management agreements. Specifically, the Commission should restrict strategic investors from requiring execution of management agreements by the Designated Entity as a component of the investment.

IX. Conclusion

Failure of the Commission to encourage investment by venture capital firms while not discouraging large corporations from creating "captive" Designated Entities may frustrate the objectives of both Congress and the Commission to provide an opportunity to create more representation of Designated Entities in the communications sector. Venture capital firms have a history of creating vibrant businesses run by competent persons that otherwise were unable to

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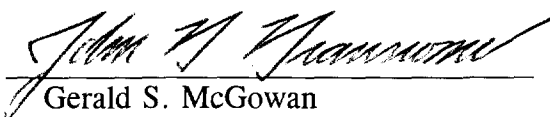
Respectfully submitted,

MEDIA COMMUNICATIONS PARTNERS

PROVIDENCE VENTURES INC.

FLEET EQUITY PARTNERS

SPECTRUM EQUITY

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Date: October 11, 1994